

**Background Information re: Event \*\*\*This section is NOT talking points.\*\*\* Background information copied from event website with addition of other panel members' affiliations.**

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This panel of experts will discuss the status of Florida's efforts to assume Clean Water Act, Section 404 dredge and fill permitting authority from the U.S. Army Corps of Engineers. Topics will include discussion of legislation; **where DEP is in the process of negotiations with the EPA, Corps and federal Services; which, if any, of the agreements are in place with the federal agencies and what they provide; how Endangered Species Act authorization is to be achieved; and what issues are still outstanding.** Audience participation is encouraged.

Instructors:

- Herschel Vinyard (moderator) – attorney, Foley & Lardner LLP Former DEP Secretary under Gov. Rick Scott
- David Childs – attorney, Hopping Green & Sams
- John Truitt – DEP Deputy Secretary, Regulatory Programs
- Ryan Matthews – principal, Peebles, Smith & Matthews Former Interim DEP Secretary under Gov. Rick Scott
- Larry Williams – Florida State Supervisor, US Fish & Wildlife Service
- Tori White – Deputy Chief, Regulatory Division, Jacksonville District Corps

**\*\*\*Additional Talking Points for Anticipated Questions\*\*\***

- How will **Endangered Species Act** review be handled?
  - There are ongoing discussions on how to address T and E species once the state assumes the program
  - For a program to be assumable by a state, it must meet the same standard as in the federal regulations (known as the "404(b)(1) Guidelines" even though they are regulations). Included is the prohibition on permitting a discharge of dredged or fill material if it jeopardizes the continued existence of species listed as endangered or threatened, or results in likelihood of the destruction or adverse modification of critical habitat.
- Over which waters will Florida assume jurisdiction (and which will the Corps retain)?
  - Describing which waters will be assumed by Florida is a required element of the program description, and relies on a description from the Corps of which waters the Corps will retain jurisdiction over. This is still being determined by the Corps, with the retained waters list being a required component of the Memorandum of Agreement with DEP.
  - At request of state organizations, EPA convened a federal advisory subcommittee "... to provide advice and recommendations to EPA on how to clarify for which waters states and tribes will assume CWA § 404 permitting responsibilities, and for which waters the USACE will retain permitting authority."

- The final report of that committee was delivered to EPA in June 2017 with majority and minority recommendations.
- Based on the committee's recommendations, EPA is developing a proposal to update the federal regulations governing 404 program assumption (announced May 2018).
- We expect to issue a Notice of Proposed Rulemaking in September 2019, with final rule issuance targeted for September 2020.